

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE J.B.KOSHY**

**&**

**THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN**

**WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929**

**MFA.No. 431 of 2000**  
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**O.P(MV).NO.813/1983 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, KOTTAYAM.**  
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**APPELLANT/4TH RESPONDENT:**  
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**THE NEW INDIA ASSURANCE CO. LTD.,  
TRIVANDRUM, REPRESENTED BY ITS  
ASSISTANT MANAGER, REGIONAL OFFICE,  
M.G. ROAD, ERNAKULAM.**

**BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA).**

**RESPONDENTS/CLAIMANTS:**  
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- 1. MOLLY VARGHESE, CHUNGATHIL HOUSE,  
THALAPPADY, RUBBER BOARD.P.O.,  
KOTTAYAM.**
- 2. SUNITHA VARGHESE, (MINOR),  
CHUNGATHIL HOUSE,  
THALAPPADY, RUBBER BOARD.P.O.,  
KOTTAYAM, REP. BY MOTHER  
THE 1ST RESPONDENT.**
- 3. SURESH VARGHESE, (MINOR),  
CHUNGATHIL HOUSE,  
THALAPPADY, RUBBER BOARD.P.O.,  
KOTTAYAM, REP. BY MOTHER  
THE 1ST RESPONDENT.**

**M.F.A. NO. 431/2000:**

4. C.C. JOSEPH, VADAKKE ENACHIRAYIL,  
KAPPUMTHALA, KADUTHURUTHY.
5. KURUVILLA, S/O. PHILIPOSE,  
THEKKEYILAYA VALLIKATU VEEDU,  
AMAYANNOOR, KOTTAYAM.
6. KURUVILLA @ JOY,  
S/O. MANI, KUMARAMKODATHU HOUSE,  
AMAYANNOOR, KOTTAYAM.

BY ADV. SRI.V.P.YOHANNAN FOR R1 TO R3,  
SRI.JOSHI VARGHESE  
SMT.M.R.MINI FOR R5 & R6,  
SRI.K.SANDESH RAJA  
SRI.T.R.RAMACHANDRAN NAIR  
SRI.SUNIL CYRIAC FOR R4.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD  
ON 27/06/2007, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

**ORDER ON C.M.P. NO. 2611/2000 IN M.F.A. NO. 431/2000**

**DISMISSED**

**SD/- J.B.KOSHY, JUDGE.**

**27/06/2007.**

**SD/- K.P.BALACHANDRAN, JUDGE.**

**//TRUE COPY//**

**prv.**

J.B.Koshy & K.P.Balachandran, JJ.

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M.F.A.No. 431 of 2000  
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**JUDGMENT**

Koshy, J.

The wife and minor children of a motor accident victim applied for compensation. The Tribunal found that the accident occurred due to the negligent driving of the vehicle insured with the appellant Insurance Company and awarded Rs.90,000/- with interest as total compensation. That award is challenged by the Insurance Company in this appeal contending that the Tribunal ought to have directed them to pay only Rs.50,000/- as there was limitation of liability. Exhibit B4 policy is an Act Policy. The accident occurred on 27.10.1980 during the currency of the Motor Vehicles Act, 1939. Limitation of liability was mentioned in Exhibit B4 policy and therefore, the owner and the driver are liable to pay the balance amount of compensation and not the Insurance Company, as

their liability is limited to Rs.50,000/- with corresponding interest. The present impugned order was passed after remand by this Court. The original application was filed in 1981. Exhibit B4 policy was produced by the Insurance Company only in 1997. The Insurance Company failed to produce the documents at the initial stages and filed the written statement only on 3.10.1997, contending that as per the terms and conditions of the policy, the liability of the company is limited to Rs.50,000/-.

2. It is well settled law that it is for the Insurance Company to plead and prove the defences. But, this Court, while remanding the matter, directed the Tribunal to consider the same also. The Tribunal held that even though there was limitation of liability under Exhibit B4 policy, since the Insurance Company produced the documents and filed written statement only after 1 ½ decades, after the specified period, the claimants/dependants of the poor victim cannot be denied the

benefit and cannot be asked to run after the owner, etc. Therefore, the Insurance Company has to deposit the compensation amount. The Tribunal also referred to the decision of the Apex Court in **British Indian General Insurance Co. Ltd., Bombay v. Smt. Maya Banerjee** (AIR 1986 SC 2110). In that case the Supreme Court directed the Insurance Company to pay the same in view of the delay. In this case, the accident occurred on 27.10.1980. As pointed out by the Tribunal, the insurance policy was produced and the written statement was filed only in 1997, stating that there is limitation of liability. But, the owner did not produce the policy. In the above circumstances, on the facts of this case and considering the long delay in producing the documents, the Insurance Company is liable to deposit the compensation amount and recover the same from the insured and the driver, in excess of the amount of Rs.50,000/- with interest.

The appeal is, thus, partly allowed.

(J.B.Koshy, Judge)

27<sup>th</sup> June, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

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M.F.A.No. 431 of 2000

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**JUDGMENT**

27<sup>th</sup> June, 2007